

Re-write of Intention Program Violation Statute 49.151 (2)

Changes the Department of Children and Families would like to make to Stats. 49.152(2) Intention Program Violation (IPV) includes:

1. Clarify that a W-2 agency has the authority to make all three IPV determinations.

The current law is confusing. It appears that an IPV can only be identified by a court or after an administrative hearing. While this may have been the intent, experience with the FoodShare program, which requires a hearing to determine any IPV, shows that very few IPV's are determined because of the administrative burden of identifying them.

2. Clarify the appeal process for all IPV determinations.

Amend law to specifically state how an individual may appeal an IPV determination. *Need to decide on whether the appeal goes through the existing W-2 dispute resolution process (fact finding (FF) and possibly a departmental review or if the IPV decision goes directly to DHA for a ch. 227 review.) Considerations:*

- a. Should an overpayment and the reason for the overpayment (agency error, client error, IPV) be made simultaneously? W-2 overpayment decisions go to a FF. If IPV appeal is same as overpayment, identify that these decision may be decided at the same reviews (FF or departmental). If these are done simultaneously, another concern is that overpayments will automatically be considered IPV's.
 - b. This statute covers both CC and W-2 and each program has separate appeal processes.
 - c. By virtue of the seriousness of the IPV charge as well as the necessary proof for determining intent on the part of the individual, it may be in the best interest of the individual for the appeal to go directly to a ch. 227 hearing rather than to the W-2 agency for appeal.
 - d. If decision is made to bypass the FF decision, language should be added to the statutes that reference bypassing 49.152.
3. Add penalties to the first and second IPV determinations.

Currently, there are no specific penalties for the first and second IPV determinations and a permanent disqualification for the third IPV. The lack of penalties for the first and second provide no incentive for avoiding subsequent intentional violations and the permanency of the third penalty seems unfair. If there were penalties associated with the first and second violations, similar to AFDC and FoodShare, individuals may be less likely to commit subsequent violations and risk being permanently barred from the programs. An example of penalties may

include 3 months for the first violation, 6 months for the second violation and permanent disqualification for the 3rd violation.

4. Add an option to seek requalification after 5 years (or x number of years).

While retaining permanent disqualification for the 3rd violation, in some cases, requalification may be optional under some circumstances. The statute could be written to require the Department to promulgate administrative rules to define requalification requirements.

5. Create separate subsection to address child care provider IPV's.

49.151 (2) INTENTIONAL PROGRAM VIOLATIONS:

If a court finds or it is determined after an administrative hearing that an individual who is a member of a Wisconsin works group applying for or receiving benefits under ss. 49.141 to 49.161, for the purpose of establishing or maintaining eligibility for those benefits or for the purpose of increasing the value of those benefits, has intentionally violated, on 3 separate occasions, any provision in ss. 49.141 to 49.161 or any rule promulgated under those sections, the Wisconsin works agency may permanently deny benefits under ss. 49.141 to 49.161 to the individual.

49.151 (2) INTENTIONAL PROGRAM VIOLATIONS (1st re-write submitted in October 12, 2010 memo):

If a court finds or it is determined after an administrative hearing it is determined that an individual who is a member of a Wisconsin works group member, individual found eligible under 49.155(1m), or a child care provider receiving funds under 49.155 applying for or receiving benefits under ss. 49.141 to 49.161, for the purpose of establishing or maintaining eligibility for those benefits or for the purpose of increasing the value of those benefits, has intentionally violated, on 3 separate occasions, any provision in ss. 49.141 to 49.161 or any rule promulgated under those sections, that individual may request an administrative hearing to contest the intentional program violation determination; after three such intentional program violations, the department, Wisconsin works agency, or the child care administrative agency may permanently deny benefits under ss. 49.141 to 49.161 to the individual.